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Supreme Court of the United States

OCTOBER TERM, 1962

No. 826

WILLIAM A. ALBAUGH, Maryland
Congressman-at-large Candidate,
Petitioner,

v.

RALPH R. ROBERTS, Clerk of the United States
House of Representatives,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Mt. Rainier, Maryland
Petitioner, Pro Se

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the District of Columbia Circuit, dated January 20, 1963, dismissing the appeal from the judgment of the District Court for the District of Columbia, entered July 17, 1962, dismissing petitioner's complaint seeking relief to correct respondent's error in certifying House of Representative seats to the Congressional Election District of Maryland on the false assumption that the Maryland Congressional Election District does not include the District of Columbia territory.

The judgment of the District Court is found on page 11 of the record on appeal. The judgment of the Court of Appeals is found on page 3a of this petition's appendix.

OPINIONS

No opinion was rendered by the Court of Appeals for the District of Columbia Circuit or by the District Court for the District of Columbia.

JURISDICTION

The judgment of the Court of Appeals was entered on January 29, 1963 (App. 3a). The jurisdiction of this Court is invoked under Constitution, Art. IV, Sec. 2 and under 28 U.S.C. 1254.

QUESTIONS PRESENTED

1. Whether the Congressional Election District of Maryland includes the District of Columbia?

2. If so, whether a Maryland Congressman-at-large candidate has standing to contest an apportionment of Representatives to Maryland which is inconsistent with this position?

CONSTITUTIONAL AND STATUTORY LAWS INVOLVED

The constitutional and statutory laws involved are: Constitution, Art. I, Sec. 2; Art. IV, Sec. 2; and Art. V; Act of Congress Accepting Cession, 1 Stat. 130, ch. 28; Act of Congress Separating the Local Government of the District of Columbia from the Local Government of Maryland, 2 Stat. 103, ch. 15; Act of Maryland Redistricting the Congressional Election District of Maryland, Md. Act of 1791, ch. 62; Act of Maryland Requiring Both Montgomery and Prince George's Counties to be Subdivided into Five Election Districts, Md. Act of 1799,

ch. 50; and Subdivision Acts of Montgomery and Prince George's Counties implementing previous Md. Act. These laws are found on page 1a and 2a of this petition's appendix.

STATEMENT OF THE CASE

Relying upon the implicit protection of Constitution Art. IV, Sec. 2 and the explicit protection of 28 U.S.C. 1343 and 1331 the petitioner William A. Albaugh, a citizen and Congressman-at-large candidate of Maryland, filed on May 1, 1962, a "Complaint For The Unauthorized Removal Of The District Of Columbia From The National Election District Of Maryland In The Apportionment Of Representatives For the United States House Of Representatives For The Eighty-Eighth Congress" (R. 2-3) in the United States District Court for the District of Columbia seeking relief to correct respondent's error in apportioning Congressional seats to Maryland.

Petitioner alleged that the District of Columbia was originally a part of the Congressional Election District of Maryland, that Congress has failed to transfer the territory to a different Congressional Election District, that the Constitution does not authorize removing Congressional Election District status from any territory which has it, that the respondent on January 12, 1961 certified Congressional seats to Maryland on the assumption that the District of Columbia was not a part of Maryland (R. 4-7), and that this error caused Maryland to lose one seat.

The respondent did not answer the complaint. In his motion to dismiss (R. 7-10), the respondent asserted that the District of Columbia ceased to be a part of the state of Maryland when it came under the exclusive legislative jurisdiction of Congress.

On July 17, 1962, the District Court entered judgment for the respondent on the grounds that the complaint

failed to state a claim upon which relief could be granted, that the Court lacked jurisdiction over the subject matter, and the issue therein presented a non-justiciable political question (R. 11). The petitioner appealed (R. 11), and on January 29, 1963, the Court of Appeals for the District of Columbia Circuit dismissed the appeal from the judgment of the lower Court (App. 3a).

ARGUMENT AMPLIFYING REASON RELIED ON FOR GRANTING THE WRIT

Petitioner Respectfully Submits That This Court Should Settle Whether The Congressional Election District Of Maryland Includes The District Of Columbia And If So, Whether A Maryland Congressman-at-large Candidate Has Standing To Contest An Apportionment Of Representatives To Maryland Which Is Inconsistent With This Position.

Before launching a direct attack against the respondent's position, a word should be said concerning the Constitution's ambiguous terminology. The word "state" is used time and again in this document in two different conflicting senses, namely, to mean a Congressional Election District and/or an independent local government. There was no reason to assume that the Congressional Election District of Maryland would always have the same boundary as the local government of Maryland.

When Congress passed the Organic Act, 2 Stat. 103, ch. 15, on February 27, 1801 separating the local government of the District of Columbia from the local government of Maryland, the following provision was made:

> ". . . that the laws of the state of Maryland, as they now exist, shall be and continue in force in that part of the said district, which was ceded by that state . . ."

The existing February 27, 1801 Maryland laws (App. 2a) clearly defined the boundary of the Congressional

Election District of Maryland to include that part of the District of Columbia ceded by Maryland to Congress in 1790. Congress has subsequently passed no Act transferring the District of Columbia to a different Congressional Election District.

The Constitution specifically provides in Art. V that all Constitutional Amendments will be written in such a way that:

> " . . . no state, without its consent, shall be deprived of its equal suffrage in the Senate."

Constitution, Art. IV, Sec. 2 places the same restriction on all statute laws by the following language:

> "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states . . ."

If equal suffrage in the Senate cannot be denied either by amendment or by statute law, there can be no legal basis for respondent's position that the District of Columbia has lost its Maryland Congressional Election District status and is now in no Congressional Election District.

Consequently, since the District of Columbia must be in the Maryland Congressional Election District, the foregoing "equal privileges" guarantee requires that the District of Columbia population be considered in apportioning Representatives to Maryland and gives all Maryland citizens, including Maryland Congressman-at-large candidates, standing to correct any error in the apportionment to Maryland.

CONCLUSION

WHEREFORE, it is respectfully submitted that the petition for a writ of certiorari as prayed for should be granted.

WILLIAM A. ALBAUGH
3368 Chillum Rd. Apt. 201
Mt. Rainier, Maryland
Petitioner, Pro Se

February 1963

APPENDIX

Constitutional and Statutory Laws Involved

I. Constitution, Art. I, Sec. 2

> "Representatives . . . shall be apportioned among the several states . . . according to their respective numbers . . ."

II. Constitution, Art. IV, Sec. 2

> "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states . . ."

III. Constitution, Art. V

> "The Congress . . . shall propose amendments to this constitution . . . provided . . . that no state, without its consent, shall be deprived of its equal suffrage in the Senate."

IV. Act of Congress Accepting Cession

> " . . . provided, nevertheless, that the operation of the laws of the state within such district shall not be affected by this acceptance . . . until Congress shall otherwise by law provide . . ."
>
> (July 16, 1790, ch. 28, 1 Stat. 130)

V. Act of Congress Separating the Local Government of the District of Columbia from the Local Government of Maryland

> "Sec. 1. Be it enacted . . . that the laws of the state of Maryland, as they now exist, shall be and continue in force in that part of the said district, which was ceded by that state to the United States . . ."
>
> (February 27, 1801, ch. 15, 2 Stat. 103)

VI. Act of Maryland Redistricting the Congressional Election District of Maryland

> " . . . that provided this state should be entitled to no more than eight members . . . then

. . . it shall be . . . divided into eight districts, to wit: . . . Prince George's and Calvert Counties, including the city of Annapolis, the second, Montgomery County, . . . , the third, . . . "

(December 26, 1791, Md. Act of 1791, ch. 62)

VII. Act of Maryland Requiring Both Montgomery and Prince George's Counties to be Subdivided into Five Election Districts (January 3, 1800, Md. Act of 1799, ch. 50)

VIII. Subdivision Act of Prince George's County

" . . . 5th District Begining at the mouth of Oxen Run from thence up and with the Potowmack River to the mouth of Rock Creek from thence with the Montgomery line . . . Bladensburg the place fixed on for Holding the elections . . . "

(April 8, 1800, Liber J. R. M. No. 8 at folio 208)

IX. Subdivision Act of Montgomery County

" . . . for the fifth district all that part of montgomery county lying within the territory of columbia the election to be held at George Town . . . "

(May 21, 1800, Liber I. No. 10 at folio 181)

(Filed January 29, 1963)

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,242

WILLIAM A. ALBAUGH, APPELLANT

v.

RALPH R. ROBERTS, Clerk of the United States House of Representatives, APPELLEE

Decided January 29, 1963

Before: Washington, Danaher and Burger, Circuit Judges.

ORDER

This appeal came on for hearing on the record on appeal from the United States District Court for the District of Columbia and was argued by counsel.

UPON CONSIDERATION WHEREOF, it is ORDERED by the Court that this appeal is hereby dismissed. Albaugh v. Mueller, No. 15,456, dismissed February 19, 1960.

IT IS FURTHER ORDERED by the Court that each party bear his own costs on this appeal.

Per Curiam

Dated: January 29, 1963